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and Marcos Mendiola

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

OSCAR CANCINO and MARCOS  
MENDIOLA, individually, and on behalf of  
other members of the general public similarly  
situated, and as aggrieved employees pursuant to  
the Private Attorneys General Act (“PAGA”),

Plaintiffs,

vs.

COTTON ON USA INC., a Delaware  
corporation; and DOES 1 through 10, inclusive,

Defendants.

**Electronically Filed  
by Superior Court of CA,  
County of Santa Clara,  
on 1/16/2025 3:37 PM  
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Case #22CV405002  
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Case No.: 22CV405002

**SECOND AMENDED CLASS ACTION  
COMPLAINT & ENFORCEMENT ACTION  
UNDER THE PRIVATE ATTORNEYS  
GENERAL ACT, CALIFORNIA LABOR  
CODE §§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

**Jury Trial Demanded**

1 Plaintiffs Oscar Cancino and Marcos Mendiola, individually and on behalf of all other members  
2 of the public similarly situated, and as aggrieved employees and on behalf of all aggrieved employees,  
3 allege as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure section 382  
6 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties and any other  
7 available relief on behalf of Plaintiffs, the State of California, and other current and former employees  
8 who worked for Defendants in California as non-exempt, hourly paid employees and received at least  
9 one wage statement and against whom one or more violations of any provision in Division 2 Part 2  
10 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable  
11 Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint.  
12 The monetary damages, penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction  
13 limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction  
14 over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which  
15 this action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of damages,  
16 penalties, and other relief sought in this action does not exceed \$75,000.

17 2. This Court has jurisdiction over Defendants because Defendants are either citizens of  
18 California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of  
19 the California market so as to render the exercise of jurisdiction over them by the California courts  
20 consistent with traditional notions of fair play and substantial justice. There is no basis for federal  
21 diversity jurisdiction in this action because there is no complete diversity, and this case falls within the  
22 statutory exceptions to “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C.  
23 § 1332(d)(4). Upon information and belief, two-thirds or more of the class members and Defendants are  
24 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens of  
25 California; (b) the alleged wage and hour violations occurred in California; (c) significant relief is being  
26 sought against Defendants whose violations of California wage and hour laws form a significant basis  
27 for Plaintiffs’ claims; and (d) no other class action has been filed within the past three (3) years on behalf  
28 of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Santa Clara, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least three locations within the County of Santa Clara, including Defendants' stores in Santa Clara (2855 Stevens Creek Boulevard, Santa Clara, California 95050; 2855 Stevens Creek Boulevard, Suite 2565, Santa Clara, California 95050; and 2855 Stevens Creek Boulevard, Shop 2277, Santa Clara, California 95050). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County and Plaintiffs could bring this action to recover penalties in Santa Clara County, venue is proper.

#### **THE PARTIES**

4. Plaintiff Oscar Cancino is a resident of Oxnard, California. Defendants employed Plaintiff Cancino as an hourly paid, non-exempt Sales Associate from approximately September 2021 to September 2022. Plaintiff Cancino worked for Defendants at their store location in Oxnard, California. During his employment, Plaintiff Cancino typically worked seven (7) hours or more per day, and four (4) days per week. Plaintiff Cancino's primary job duties included, without limitation, ringing up customer transactions, answering customers' questions, and organizing merchandise on the sales floor.

5. Plaintiff Marcos Mendiola is a resident of Las Vegas, Nevada. Defendants employed Plaintiff Mendiola as an hourly paid, non-exempt Key Holder from approximately August 2023 to December 2023. Plaintiff Mendiola worked for Defendants at their store location in Victorville, California. During his employment, Plaintiff Mendiola typically worked six (6) hours or more per day, and four (4) or more days per week. Plaintiff Mendiola's primary job duties included, without limitation, opening and closing the store, attending meetings, and providing customer service.

6. COTTON ON USA INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

7. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein

under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 were the partners, agents, owners, or managers of COTTON ON USA INC. at all relevant times.

9. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, COTTON ON USA INC. and/or DOES 1 through 10 (collectively, “Defendants” or “COTTON ON”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

10. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

11. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

### **GENERAL ALLEGATIONS**

12. Defendants are an Australian retail chain known for their fast-fashion clothing for men, women, and kids sold through their Cotton On, Cotton On Kids, Cotton On Body, and Typo brands. Defendants own and operate approximately 38 store locations throughout California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in La Mirada, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

13. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized

documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions.

14. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in La Mirada, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

15. Defendants continue to employ non-exempt or hourly paid employees in California.

16. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

17. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class members were not paid for all hours worked because all hours worked were not recorded.

18. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

19. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to meal periods in accordance with the

1 California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at  
2 their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute  
3 meal periods and that Plaintiffs and class members were not provided with all meal periods or payment  
4 of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,  
5 uninterrupted, thirty (30) minute meal period.

6 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
7 have known that Plaintiffs and class members were entitled to rest periods in accordance with the  
8 California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at  
9 their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In  
10 violation of the California Labor Code, Plaintiffs and class members were not authorized and permitted  
11 to take compliant rest periods, nor did Defendants provide Plaintiffs and class members with payment of  
12 one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted  
13 to take a compliant rest period.

14 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
15 have known that Plaintiffs and class members were entitled to receive complete and accurate wage  
16 statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and  
17 class members were not provided complete and accurate wage statements.

18 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
19 have known that they had a duty to maintain accurate and complete payroll records in accordance with  
20 the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally  
21 failed to do so.

22 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
23 have known that Plaintiffs and class members were entitled to timely payment of all wages earned upon  
24 termination of employment. In violation of the California Labor Code, Plaintiffs and class members did  
25 not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages,  
26 and/or meal and rest period premiums, within permissible time periods.

27 25. Plaintiffs are informed and believes, and thereon alleges, that Defendants knew or  
28 should have known that Plaintiffs and class members were entitled to timely payment of wages during

1 their employment. In violation of the California Labor Code, Plaintiffs and class members did not  
2 receive payment of all wages, including, but not limited to, overtime wages, minimum wages, and/or  
3 meal and rest period premiums, within permissible time periods.

4 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
5 have known that Plaintiffs and class members were entitled to suitable seating and/or were entitled to sit  
6 when it did not interfere with the performance of their duties and also have seats nearby to use during a  
7 lull in tasks that do require moving about or standing. In violation of the California Labor Code and  
8 applicable IWC Wage Order, Defendants failed to provide Plaintiffs and class members with suitable  
9 seating.

10 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
11 have known that Plaintiffs and class members were entitled to receive full reimbursement for all  
12 business-related expenses and costs they incurred during the course and scope of their employment and  
13 that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

14 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
15 mentioned, Defendants knew or should have known that Defendants had a duty to provide Plaintiffs and  
16 class members with written notice of the material terms of their employment with Defendants as required  
17 by the California Wage Theft Prevention Act, but failed to do so.

18 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
19 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and  
20 class members for all hours worked, and that Defendants had the financial ability to pay such  
21 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to  
22 Plaintiffs and class members that they were properly denied wages, all in order to increase Defendants'  
23 profits.

#### 24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 30. At all times herein set forth, PAGA provides that any provision of law under the Labor  
26 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by  
27 the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an  
28 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and

1 other current or former employees pursuant to procedures outlined in California Labor Code section  
2 2699.3.

3 31. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person  
4 who was employed by the alleged violator and against whom one or more of the alleged violations was  
5 committed.”

6 32. Plaintiffs and other current and former employees of Defendants are “aggrieved  
7 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former  
8 employees and one or more of the alleged violations were committed against them.

9 33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,  
10 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have  
11 been met:

- 12 (a) The aggrieved employee or representative shall give written notice by online  
13 filing with the LWDA and by certified mail to the employer of the specific  
14 provisions of the California Labor Code alleged to have been violated, including  
15 the facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a)  
17 and any employer response to that notice shall be accompanied by a filing fee of  
18 seventy-five dollars (\$75).
- 19 (c) The LWDA shall notify the employer and the aggrieved employee or  
20 representative by certified mail that it does not intend to investigate the alleged  
21 violation (“LWDA Notice”) within sixty (60) calendar days of the postmark  
22 date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or  
23 if no LWDA Notice is provided within sixty-five (65) calendar days of the  
24 postmark date of the aggrieved employee’s notice, the aggrieved employee may  
25 commence a civil action pursuant to California Labor Code section 2699 to  
26 recover civil penalties.

27 34. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through  
28 Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those

1 listed in Section 2699.5 after the following requirements have been met:

- 2 (a) The aggrieved employee or representative shall give written notice by online  
3 filing with the LWDA and by certified mail to the employer of the specific  
4 provisions of the California Labor Code alleged to have been violated (other  
5 than those listed in Section 2699.5), including the facts and theories to support  
6 the alleged violation.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c)  
8 and any employer response to that notice shall be accompanied by a filing fee of  
9 seventy-five dollars (\$75).
- 10 (c) The employer may cure the alleged violation within thirty-three (33) calendar  
11 days of the postmark date of the notice sent by the aggrieved employee or  
12 representative. The employer shall give written notice within that period of time  
13 by certified mail to the aggrieved employee or representative and by online  
14 filing with the LWDA if the alleged violation is cured, including a description of  
15 actions taken, and no civil action pursuant to Section 2699 may commence. If  
16 the alleged violation is not cured within the 33-day period, the aggrieved  
17 employee may commence a civil action pursuant to Section 2699.

18 35. On November 23, 2022, Plaintiff Cancino provided written notice by online filing to the  
19 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code  
20 alleged to have been violated, including facts and theories to support the alleged violations, in accordance  
21 with California Labor Code section 2699.3. Plaintiff Cancino's written notice was accompanied with the  
22 applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt  
23 of Plaintiff Cancino's written notice and assigned Plaintiff Cancino PAGA Case Number LWDA-CM-  
24 921387-22. A true and correct copy of Plaintiff Cancino's written notice to the LWDA and Defendants  
25 is attached hereto as "Exhibit 1."

26 36. On July 15, 2024, Plaintiff Mendiola provided written notice by online filing to the  
27 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code  
28 alleged to have been violated, including facts and theories to support the alleged violations, in accordance

1 with California Labor Code section 2699.3. Plaintiff Mendiola's written notice was accompanied with  
2 the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed  
3 receipt of Plaintiff Mendiola's written notice and assigned Plaintiff Mendiola PAGA Case Number  
4 LWDA-CM-1039726-24. A true and correct copy of Plaintiff Mendiola's written notice to the LWDA  
5 and Defendants is attached hereto as "Exhibit 2."

6 37. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent the  
7 notices described above to the LWDA, and the LWDA has not responded that it intends to investigate  
8 Plaintiffs' claims and Defendants have not cured the violations.

9 38. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor  
10 Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of  
11 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,  
12 1197, 1197.1, 1198, 2802, and 2810.5.

13 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of  
14 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating  
15 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil  
16 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
17 pay period for which the employee was underpaid . . . . (2) For each subsequent violation, one hundred  
18 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
19 underpaid . . . ." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are  
20 in addition to any other civil or criminal penalty provided by law."

21 40. Defendants, at all times relevant to this complaint, were employers or persons acting on  
22 behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees' rights by violating  
23 various sections of the California Labor Code as set forth above.

24 41. As set forth below, Defendants have violated numerous provisions of both the Labor  
25 Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

26 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a),  
27 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys  
28 general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees,

1 and the State of California against Defendants for violations of California Labor Code sections 201, 202,  
2 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

3 **CLASS ACTION ALLEGATIONS**

4 43. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other  
5 persons similarly situated, and thus seek class certification under California Code of Civil Procedure  
6 section 382.

7 44. All claims alleged herein arise under California law for which Plaintiffs seek relief  
8 authorized by California law.

9 45. Plaintiffs' proposed class consists of and is defined as follows:

10 All persons who worked for Defendants as non-exempt, hourly paid  
11 employees in California, within four years prior to the filing of the initial  
12 complaint until the date of trial ("Class").

13 46. Plaintiffs' proposed subclass consists of and is defined as follows:

14 All persons who worked for Defendants as non-exempt, hourly paid  
15 employees in California and who received at least one wage statement  
16 within one (1) year prior to the filing of the initial complaint until the date  
17 of trial ("Subclass").

18 47. Members of the Class and Subclass are referred to herein as "class members."

19 48. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional  
20 subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

21 49. There are common questions of law and fact as to class members that predominate over  
22 questions affecting only individual members, including, but not limited to:

- 23 (a) Whether Defendants required Plaintiffs and class members to work over eight  
24 (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per  
25 week and failed to pay all legally required overtime compensation to Plaintiffs  
26 and class members;
- 27 (b) Whether Defendants failed to pay Plaintiffs and class members at least  
28 minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiffs and class members meal  
periods;

- (d) Whether Defendants failed to authorize and permit Plaintiffs and class members to take rest periods;
- (e) Whether Defendants provided Plaintiffs and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiffs and class members upon their discharge;
- (h) Whether Defendants failed to timely pay overtime wages, minimum wages, and/or meal and rest period premiums to Plaintiffs and class members during their employment;
- (i) Whether Defendants failed to provide Plaintiffs and class members with suitable seating;
- (j) Whether Defendants failed to reimburse Plaintiffs and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (k) Whether Defendants failed to provide written notice of information material to Plaintiffs' and class members' employment with Defendants;
- (l) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (m) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

50. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater

1 than one hundred (100) individuals and the identity of such membership is  
2 readily ascertainable by inspection of Defendants' employment records.

3 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the  
4 interests of each class member with whom they have a well-defined community  
5 of interest, and Plaintiffs' claims (or defenses, if any) are typical of all class  
6 members as demonstrated herein.

7 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the  
8 interests of each class member with whom they have a well-defined community  
9 of interest and typicality of claims, as demonstrated herein. Plaintiffs  
10 acknowledge that they have an obligation to make known to the Court any  
11 relationship, conflicts or differences with any class member. Plaintiffs'  
12 attorneys, the proposed class counsel, are versed in the rules governing class  
13 action discovery, certification, and settlement. Plaintiffs have incurred, and  
14 throughout the duration of this action, will continue to incur costs and attorneys'  
15 fees that have been, are, and will be necessarily expended for the prosecution of  
16 this action for the substantial benefit of each class member.

17 (d) Superiority: The nature of this action makes the use of class action adjudication  
18 superior to other methods. A class action will achieve economies of time, effort,  
19 and expense as compared with separate lawsuits, and will avoid inconsistent  
20 outcomes because the same issues can be adjudicated in the same manner and at  
21 the same time for the entire class.

22 (e) Public Policy Considerations: Employers in the State of California violate  
23 employment and labor laws every day. Current employees are often afraid to  
24 assert their rights out of fear of direct or indirect retaliation. Former employees  
25 are fearful of bringing actions because they believe their former employers  
26 might damage their future endeavors through negative references and/or other  
27 means. Class actions provide the class members who are not named in the  
28 complaint with a type of anonymity that allows for the vindication of their rights

while simultaneously protecting their privacy.

## **FIRST CAUSE OF ACTION**

### **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

#### **(Against all Defendants)**

51. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

52. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

53. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

54. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

55. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including shift differential pay, nondiscretionary bonuses and incentive pay.

56. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve

1 (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

2 57. During the relevant time period, Defendants willfully failed to pay all overtime wages  
3 owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and class members  
4 were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in  
5 excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours  
6 worked were not recorded.

7 58. First, Defendants had, and continue to have, a company-wide policy and/or practice  
8 requiring Plaintiffs and class members to perform various work-related tasks while off-the-clock before  
9 and after their shifts. For example, because Defendants' timekeeping system was integrated with the  
10 company's point-of-sale ("POS") system, Plaintiff Cancino and class members would often have to wait  
11 to clock in for the start of their shifts, because other employees were using the POS system to handle  
12 customer transactions. For instance, Plaintiff Cancino was required to wait several minutes under  
13 Defendants' control until a POS machine was available for clocking-in, time for which he was not paid.  
14 Further, during this time while Plaintiff Cancino waited to clock in for the start of his shift,  
15 approximately three (3) times per week, Plaintiff Cancino was required to complete tasks such as  
16 unlocking fitting room doors and allowing customers into fitting rooms. As another example, Plaintiffs  
17 sometimes clocked out at the end of their shifts, but were required to continue working in order to reduce  
18 the number of customers waiting in line to checkout during a rush of customer foot traffic, taking up to  
19 10 minutes per instance, or complete processing shipments. As a further example, Defendants required  
20 Plaintiff Mendiola and class members to complete surveys and watch training videos online while off-  
21 the-clock, which would take approximately three (3) hours to complete every quarter. Thus, Defendants  
22 failed to track all of the time that employees spent performing work-related tasks outside of their shifts,  
23 and Plaintiffs and class members received no compensation for this time.

24 59. In addition, due to Defendants' practice of scheduling some shifts outside of daytime  
25 business hours, Plaintiff Cancino and class members could only enter Defendants' stores to clock in  
26 when other managerial or keyholder employees were available to open the doors. For example, on two  
27 (2) occasions, after reporting to work on time, Plaintiff Cancino was forced to wait for approximately 5-  
28 10 minutes until a manager or keyholder employee arrived at the store, before being able to enter

1 Defendants' store and clock in because there was no one available to open the doors for him. As a result,  
2 Plaintiff Cancino and class members were forced to work off-the-clock, but were not provided a means  
3 by Defendants to account for this time. Thus, Defendants failed to track this time spent working off-the-  
4 clock before their scheduled shifts, and Plaintiff Cancino and class members received no compensation  
5 for this time they remained under Defendants' control.

6 60. Second, Defendants had, and continue to have, a company-wide security policy and/or  
7 practice of requiring employees to leave the store premises together in pairs and/or groups. After  
8 clocking out at the end of their shifts, Plaintiffs and class members were required to wait for all other  
9 employees to complete their own duties before they were released by a managerial employee and could  
10 leave Defendants' premises together. For example, Plaintiffs would often clock out at their scheduled  
11 shift-end time, and then have to wait for about 15 minutes until a supervisor completed his or her closing  
12 tasks and locked up the store premises, before being released and able to leave the premises. Defendants  
13 also had a company-wide policy of requiring Plaintiffs and class members to undergo mandatory  
14 security checks by a managerial employee when exiting the premises, either for loss prevention or safety  
15 purposes. As a result of Defendants' policy, Plaintiffs and class members were required to undergo  
16 security screenings after clocking out at the end of a shift before Defendants permitted them to leave the  
17 premises. For example, before Plaintiffs were permitted to leave the premises at the end of their shifts,  
18 they were required to wait several minutes off-the-clock for a supervisor to check their bag and personal  
19 belongings. As a result, Plaintiffs and class members were subject to Defendants' control after they had  
20 clocked out for their shifts, but were not compensated for this time.

21 61. Third, Defendants had, and continue to have, a company-wide policy and/or practice of  
22 strictly staffing their store locations based on the labor hours allocated by each location's labor or payroll  
23 budget set by corporate. For example, on information and belief, Defendants limited the allocation of  
24 labor hours based on certain sales metrics, but this allotment was insufficient to staff the store locations  
25 during their hours of operation, meet customer demand, and provide adequate meal period coverage.  
26 Defendants' uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal  
27 period coverage, because there were too few employees on duty to handle the workload and attend to  
28 customers. As a result of this lack of meal period coverage, Plaintiffs and class members were not

1 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a  
2 meal period. Moreover, Defendants have a practice of failing to schedule meal periods, which further  
3 caused Plaintiffs and class members to not be relieved of their duties for compliant meal periods.  
4 Consequently, Plaintiffs and class members were required to work through and/or had their unpaid meal  
5 periods interrupted in order to complete their assigned duties and handle customer demand, time for  
6 which they were not paid.

7 62. In addition, Defendants' company-wide timekeeping system prevented Plaintiffs and  
8 class members from recording all hours worked when their meal periods were shortened or interrupted,  
9 because the system locked out Plaintiffs and class members once they clocked out for a meal period, and  
10 would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus,  
11 Defendants' timekeeping system further prevented Plaintiffs and class members from recording all hours  
12 worked when their meal periods were shortened or interrupted.

13 63. Further, on information and belief, because Defendants frowned upon employees  
14 accruing meal period penalties, Defendants' management pressured Plaintiff Mendiola and class  
15 members to record compliant meal periods, regardless of whether they had received a compliant meal  
16 period or not, in order to strictly limit the meal penalties that Defendants would otherwise owe. Thus,  
17 Defendants did not record all hours worked during meal periods, and Plaintiff Mendiola and class  
18 members performed work during meal periods for which they were not paid.

19 64. Defendants knew or should have known that as a result of these company-wide practices  
20 and/or policies, Plaintiffs and class members were performing their assigned duties off-the-clock before  
21 and after their shifts and during meal periods, and were suffered or permitted to perform work for which  
22 they were not paid. Because Plaintiffs and class members sometimes worked shifts of eight (8) hours a  
23 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime  
24 premium pay. Therefore, Plaintiffs and class members were not paid overtime wages for all of the  
25 overtime hours they actually worked.

26 65. Defendants' failure to pay Plaintiffs and class members the balance of overtime  
27 compensation as required by California law, violates the provisions of California Labor Code sections  
28 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class members are entitled

1 to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys'  
2 fees.

3 **SECOND CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum**  
5 **Wages**  
6 **(Against all Defendants)**

7 66. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
8 allegation set forth above.

9 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
10 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid  
11 to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable  
12 work time is defined in IWC Wage Order No. 7-2001 as “the time during which an employee is subject  
13 to the control of an employer, and includes all the time the employee is suffered or permitted to work,  
14 whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11070(2)(G) (defining “Hours Worked”).

15 68. First, as stated above, Defendants had a company-wide policy and/or practice requiring  
16 Plaintiffs and class members to perform various work-related tasks while off-the-clock before and after  
17 their shifts, including, waiting to clock in for the start of their shifts and completing work tasks during  
18 this time because other employees were using the POS system, assisting customers after clocking out,  
19 waiting for manager or keyholder employees to arrive and open Defendants’ stores, processing  
20 shipments, completing surveys, watching training videos, waiting to leave the premises in pairs, and  
21 undergoing security checks. Thus, Defendants failed to track this time Plaintiffs and class members  
22 spent working off-the-clock, and Plaintiffs and class members received no compensation for this time.

23 69. Second, as set forth above, due to Defendants’ uniform practices of utilizing labor  
24 budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent  
25 lack of meal period coverage, Plaintiffs and class members were forced to forego meal periods, have  
26 their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.  
27 Moreover, as stated, Defendants systematically failed to pay Plaintiffs and class members for actual  
28 hours worked during unpaid meal periods, because Defendants’ timekeeping system locked out

1 Plaintiffs and class members for 30 minutes when they clocked out for a meal period. Further, in order  
2 to prevent employees from accruing meal period penalties, upon information and belief, Defendants'  
3 management pressured Plaintiff Mendiola and class members to record compliant meal periods, even  
4 when meal periods were missed, short, and/or interrupted. Thus, Defendants failed to pay Plaintiff  
5 Mendiola and class members for actual hours worked during unpaid meal periods because these hours  
6 were not always correctly recorded.

7 70. Defendants did not pay minimum wages for all hours worked by Plaintiffs and class  
8 members. To the extent that these off-the-clock hours did not qualify for overtime premium payment,  
9 Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of  
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

11 71. Defendants' failure to pay Plaintiffs and class members minimum wages violates  
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor  
13 Code section 1194.2, Plaintiffs and class members are entitled to recover from Defendants liquidated  
14 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

### 15 **THIRD CAUSE OF ACTION**

#### 16 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period Violations** 17 **(Against all Defendants)**

18 72. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
19 allegation set forth above.

20 73. At all relevant times herein set forth, California Labor Code section 512(a) provides that  
21 an employer may not require, cause, or permit an employee to work for a period of more than five (5)  
22 hours per day without providing the employee with a meal period of not less than thirty (30) minutes,  
23 except that if the total work period per day of the employee is not more than six (6) hours, the meal  
24 period may be waived by mutual consent of both the employer and the employee. Under California law,  
25 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.  
26 4th 1004, 1041-1042 (2012).

27 74. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516,  
28 and 1198 provide that no employer shall require an employee to work during any meal period mandated

1 by an applicable order of the IWC.

2 75. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the  
3 applicable IWC Wage Order also require employers to provide a second meal period of not less than  
4 thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1)  
5 additional hour of pay at the employee's regular rate, except that if the total hours worked is no more  
6 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and  
7 the employee only if the first meal period was not waived.

8 76. During the relevant time period, as set forth above, Defendants had, and continue to  
9 have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or  
10 limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to  
11 schedule meal periods, has resulted in a lack of meal period coverage and prevented Plaintiffs and class  
12 members from taking all timely, uninterrupted meal periods to which they were entitled. As a result,  
13 Plaintiffs and class members had to work through all or part of their meal periods, had their meal periods  
14 interrupted, and/or had to wait extended periods of time before taking meal periods. For example,  
15 Plaintiff Cancino was required to work through his meal periods or could not take his meal periods until  
16 the sixth hour of his shift, due to the heavy workload and lack of coverage. Similarly, Plaintiff Mendiola  
17 was required to work through his meal periods or could not take his meal periods until after the fifth hour  
18 of his shift, due to the heavy workload and lack of coverage.

19 77. Also, as stated, Defendants' company-wide timekeeping system prevented Plaintiffs and  
20 class members from recording all hours worked when their meal periods were shortened or interrupted,  
21 because the system locked out Plaintiffs and class members once they clocked out for a meal period, and  
22 would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example,  
23 Plaintiff Cancino's meal periods were sometimes interrupted or cut short because he was required to  
24 attend to customers that had been waiting to be let into fitting rooms and the only other employee  
25 available was busy assisting other customers at the front-end register. As another example, Plaintiff  
26 Mendiola's meal periods were sometimes interrupted or cut short because he was required to assist new  
27 employees and answer their questions. Plaintiffs and class members did not sign valid meal period  
28 waivers on days that they were entitled to meal periods and were not relieved of all duties.

1           78.     At all times herein mentioned, Defendants knew or should have known that, as a result  
2 of these policies, Plaintiffs and class members were prevented from being relieved of all duties and  
3 required to perform some of their assigned duties during meal periods. Defendants further knew or  
4 should have known that Defendants did not pay Plaintiffs and class members all meal period premiums  
5 when meal periods were late, missed, shortened, or interrupted. Further, as stated, on information and  
6 belief, because Defendants frowned upon employees accruing meal period penalties, Defendants'  
7 management pressured Plaintiff Mendiola and class members to record compliant meal periods, even  
8 when they did not receive a compliant meal period, in order to strictly limit the meal penalties that  
9 Defendants would otherwise owe.

10           79.     Furthermore, Defendants engaged in a company-wide practice and/or policy of not  
11 paying all meal period premiums owed when compliant meal periods were not provided. Because of  
12 this practice and/or policy, Plaintiffs and class members have not received all premium pay for missed,  
13 late, and interrupted meal periods.

14           80.     As a result, Defendants failed to provide Plaintiffs and class members compliant meal  
15 periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full  
16 meal period premiums due.

17           81.     Defendants' conduct violates the applicable IWC Wage Order, and California Labor  
18 Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore entitled to  
19 recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation  
20 for each work day that the meal period was not provided.

#### 21                           **FOURTH CAUSE OF ACTION**

#### 22                   **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**

#### 23                           **(Against all Defendants)**

24           82.     Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
25 allegation set forth above.

26           83.     At all relevant times herein set forth, the applicable IWC Wage Order and California  
27 Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class members'  
28 employment by Defendants.

1           84.     At all relevant times, the applicable IWC Wage Order provides that “[e]very employer  
2 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the  
3 middle of each work period” and that the “rest period time shall be based on the total hours worked daily  
4 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total  
5 daily work time is less than three and one-half (3 ½) hours.

6           85.     At all relevant times, California Labor Code section 226.7 provides that no employer  
7 shall require an employee to work during any rest period mandated by an applicable order of the  
8 California IWC. To comply with its obligation to authorize and permit rest periods under California  
9 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any  
10 control over how employees spend their break time, and relieve their employees of all duties—including  
11 the obligation that an employee remain on call. A rest period, in short, must be a period of rest.”  
12 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC  
13 Wage Order and California Labor Code section 226.7(c), Plaintiffs and class members are entitled to  
14 recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day  
15 that a required rest period was not authorized and permitted.

16           86.     During the relevant time period, Defendants regularly failed to authorize and permit  
17 Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour period worked or  
18 major fraction thereof. As with meal periods, Defendants’ company-wide practices of utilizing labor  
19 budgets and/or limited payroll allocation, understaffing, and assignment of heavy workloads resulted in a  
20 lack of rest period coverage and prevented Plaintiffs and class members from being relieved of all duty  
21 in order to take compliant rest periods. Defendants’ management erroneously informed Plaintiffs and  
22 class members that they were only entitled to one (1) 10-minute rest period per shift, regardless of the  
23 shift length. Thus, Defendants also wholly failed to schedule compliant, timely rest periods, which,  
24 coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiffs and  
25 class members not being authorized and permitted to take rest periods.

26           87.     Furthermore, upon information and belief, during the relevant time period, Defendants  
27 maintained and implemented a company-wide on-premises rest period policy, which mandated that  
28 Plaintiffs and class members remain on the work premises during their rest periods. Because Plaintiffs

1 and class members were restricted from leaving the premises during rest periods, they were denied the  
2 ability to use their rest periods freely for their own purposes, such as running personal errands. Thus,  
3 Defendants effectively maintained control over Plaintiffs and class members during rest periods.

4 88. As a result of Defendants' practices and policies, Plaintiff and class members worked  
5 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all  
6 uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his  
7 employment, Plaintiff Cancino regularly had to forgo his rest periods because the store was busy and  
8 Defendants did not provide sufficient coverage. When Plaintiff Cancino was finally able to take his rest  
9 periods, they were often interrupted because he was required to attend to customers that had been waiting  
10 to check-out and the only other employee available was busy assisting customers in the fitting room area.  
11 Plaintiff Mendiola also had to forgo his rest periods entirely due to the lack of rest period coverage and  
12 the heavy workload assigned by Defendants.

13 89. Defendants have also engaged in a systematic, company-wide practice and/or policy of  
14 not paying rest period premiums owed when rest periods are not authorized and permitted. As a result of  
15 this practice and/or policy, Plaintiffs and class members have not received premium pay for all missed  
16 rest periods.

17 90. Defendants' conduct violates the applicable IWC Wage Order and California Labor  
18 Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from  
19 Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work  
20 day that a compliant rest period was not authorized and permitted.

21 //

## 22 **FIFTH CAUSE OF ACTION**

### 23 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

#### 24 **Statements and Failure to Maintain Accurate Payroll Records**

#### 25 **(Against all Defendants)**

26 91. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
27 allegation set forth above.

28 92. At all relevant times herein set forth, California Labor Code section 226(a) provides that

every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

93. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

94. Because Defendants did not accurately record the time Plaintiffs and Subclass members spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

95. Additionally, and separate from these violations, Defendants issued uniform wage statements to Plaintiffs and Subclass members that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, Defendants systematically, and on a company-wide basis, issued wage statements to Plaintiffs and Subclass members that fail to list the employing entity's name and address. For example, on information and belief, Defendants uniformly failed to list the employing entity's name and address on Plaintiff's and Subclass members' wage

1 statements, including Plaintiff Cancino's wage statements dated August 12, 2022; August 26, 2022; and  
2 September 9, 2022, and Plaintiff Mendiola's wage statement dated December 29, 2023.

3 96. The wage statement deficiencies also include, without limitation, failing to list the  
4 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate  
5 basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees  
6 were paid; failing to list the name of the employee and only the last four digits of his or her social  
7 security number or an employee identification number other than a social security number; and/or failing  
8 to state all hours worked as a result of not recording or stating hours worked off-the-clock.

9 97. California Labor Code section 1174(d) provides that "[e]very person employing labor in  
10 this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the  
11 ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at  
12 which employees are employed, payroll records showing the hours worked daily by and the wages paid  
13 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
14 employed at the respective plants or establishments . . . ." At all relevant times, and in violation of Labor  
15 Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and  
16 Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing  
17 to record the off-the-clock hours that they worked.

18 98. California Labor Code section 1198 provides that the maximum hours of work and the  
19 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the  
20 applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees  
21 for longer hours than those fixed by the order or under conditions of labor prohibited by the order is  
22 unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time  
23 records showing when the employee begins and ends each work period. During the relevant time period,  
24 Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked,  
25 and thereby failed to keep accurate records of work period and meal period start and end times for  
26 Plaintiffs and Subclass members, in violation of section 1198.

27 99. Plaintiffs and Subclass members are entitled to recover from Defendants the greater of  
28 their actual damages caused by Defendants' failure to comply with California Labor Code section

226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

## **SIXTH CAUSE OF ACTION**

### **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)**

100. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

101. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

102. On information and belief, Defendants have a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff Mendiola was terminated on or about December 27, 2023. However, Defendants did not provide Plaintiff Mendiola with his final paycheck on the day he was terminated. Instead, Defendants did not pay Plaintiff Mendiola his final wages until the next regularly scheduled pay day. Thus, Defendants failed to pay Plaintiff Mendiola his final wages immediately, in violation of California Labor Code section 201.

103. In addition, Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

104. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor

Code section 203.

## SEVENTH CAUSE OF ACTION

### **Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)**

105. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

106. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to Plaintiffs and class members during their employment.

107. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

108. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

109. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within the time periods specified by California Labor Code section 204.

110. Defendants' failure to pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the

1 statutory penalty wages pursuant to California Labor Code section 210.

2 **EIGHTH CAUSE OF ACTION**

3 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

4 **(Against all Defendants)**

5 111. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
6 allegation set forth above.

7 112. At all times herein set forth, California Labor Code section 2802 provides that an  
8 employer must reimburse employees for all necessary expenditures and losses incurred by the employee  
9 in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers  
10 from passing off their cost of doing business and operating expenses on to their employees. *Cochran v.*  
11 *Schwan's Home Service, Inc.*, 228 Cal. App 4th 1137, 1144 (2014). The applicable wage order, IWC  
12 Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or they  
13 are necessary to the performance of a job, such tools and equipment shall be provided and maintained by  
14 the employer, except that an employee whose wages are at least two (2) times the minimum wage may  
15 provide and maintain hand tools and equipment customarily required by the particular trade or craft."

16 113. During the relevant time period, Defendants, on a company-wide basis, required that  
17 Plaintiffs and class members use their own personal mobile devices, including, but not limited to, cellular  
18 phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their  
19 work-related mobile device expenses. For example, Plaintiffs and class members were required to use  
20 their personal mobile devices for work-related tasks, including responding to calls or text messages or  
21 checking merchandise inventory at Defendants' other store locations. Specifically, Plaintiff Cancino  
22 used his personal cellular phone to respond to calls or text messages from his managers and to check the  
23 availability of merchandise at Defendants' other store locations, when his store location had run out of a  
24 certain item a customer wanted to purchase. Similarly, Plaintiff Mendiola was required to use his  
25 personal cellular phone to respond to work calls or text messages from his managers to discuss other  
26 employees' performance, address issues, and receive assignments. Although Defendants required  
27 Plaintiffs and class members to utilize their personal mobile devices and/or mobile data to carry out their  
28 work-related responsibilities, Defendants failed to reimburse them for these costs.

1 114. Defendants could have provided Plaintiffs and class members with the actual equipment  
2 for use on the job, such as company mobile devices; or Defendants could have reimbursed employees  
3 for the costs of their mobile device usage. Instead, Defendants passed these operating costs onto  
4 Plaintiffs and class members. At all relevant times, Plaintiffs did not earn at least two (2) times the  
5 minimum wage.

6 115. Defendants' company-wide policy and/or practice of passing on their operating costs to  
7 Plaintiffs and class members violates California Labor Code section 2802. Defendants have  
8 intentionally and willfully failed to reimburse Plaintiffs and class members for necessary business-related  
9 expenses and costs.

10 116. Plaintiffs and class members are entitled to recover from Defendants their business-  
11 related expenses incurred during the course and scope of their employment, plus interest.

## 12 **NINTH CAUSE OF ACTION**

### 13 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

#### 14 **(Against all Defendants)**

15 117. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
16 allegation set forth above.

17 118. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil  
18 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.  
19 Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d),  
20 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees,  
21 including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in  
22 section 2699.5, including sections 516, 1182.12, and 2810.5.

23 119. Defendants' conduct, as alleged herein, violates numerous sections of the California  
24 Labor Code, including, but not limited to, the following:

- 25 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage  
26 Order for Defendants' failure to compensate Plaintiffs and other aggrieved  
27 employees with all required overtime pay, as alleged herein;
- 28 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and

1 the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs  
2 and other aggrieved employees with at least minimum wages for all hours  
3 worked, as alleged herein;

4 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the  
5 applicable IWC Wage Order for Defendants' failure to provide Plaintiffs and  
6 other aggrieved employees with meal periods, as alleged herein;

7 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC  
8 Wage Order for Defendants' failure to authorize and permit Plaintiffs and other  
9 aggrieved employees to take rest periods, as alleged herein;

10 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC  
11 Wage Order for failure to provide accurate and complete wage statements to  
12 Plaintiffs and other aggrieved employees, as alleged herein;

13 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC  
14 Wage Order for failure to maintain payroll records, as alleged herein;

15 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned  
16 wages upon termination, as alleged herein;

17 (h) Violation of Labor Code section 204 for failure to pay all earned wages during  
18 employment, as alleged herein;

19 (i) Violation of Labor Code section 1198 and the applicable IWC Wage Order for  
20 failure to provide suitable seating, as set forth below;

21 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and  
22 other aggrieved employees for all business expenses necessarily incurred, as  
23 alleged herein; and

24 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide  
25 written notice of information material to Plaintiffs' and other aggrieved  
26 employees' employment with Defendants, as set forth below.

27 120. At all relevant times herein, California Labor Code section 1198 makes it illegal to  
28 employ an employee under conditions of labor that are prohibited by the applicable wage order.

1 California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the  
2 commission shall be the . . . standard conditions of labor for employees. The employment of any  
3 employee . . . under conditions of labor prohibited by the order is unlawful.”

4 121. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll  
5 working employees shall be provided with suitable seats when the nature of the work reasonably permits  
6 the use of seats.”

7 122. Defendants’ stores are generally similar in their layout and design and there was, and  
8 continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Plaintiffs  
9 and other aggrieved employees (with reasonable or no modification to these work areas) during the  
10 performance of their work duties. Defendants could have provided Plaintiffs and other aggrieved  
11 employees with a seat or stool at their cash wraps, but instead denied employees seating and forced  
12 Plaintiffs and other aggrieved employees to stand throughout the day.

13 123. Plaintiffs and other aggrieved employees spent a substantial portion of their day behind  
14 or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably  
15 be accomplished from a seated position. However, as set forth herein, Defendants systematically, and on  
16 a company-wide basis, do not provide seats or stools at or near the cash wraps, forcing Plaintiffs and  
17 other aggrieved employees to stand throughout their work shifts.

18 124. Defendants violated California Labor Code section 1198 and California Code of  
19 Regulations, Title 8, section 11070(14)(A) because Plaintiffs and other aggrieved employees were not  
20 allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were  
21 they provided with suitable seats. Defendants’ management did not inform Plaintiffs and other  
22 aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or  
23 mention any policy regarding sitting.

24 125. As a result of Defendants’ company-wide policy and/or practice of prohibiting  
25 employees from sitting during their shifts and company-wide failure to provide suitable seating,  
26 Plaintiffs and other aggrieved employees were forced to stand during shifts and denied seats.  
27 Defendants’ failure to provide suitable seating to Plaintiffs and other aggrieved employees violates  
28 California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A). Plaintiffs

1 and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code  
2 sections 2699(a), (f), and (g).

3 126. California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen  
4 employees are not engaged in the active duties of their employment and the nature of the work requires  
5 standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area  
6 and employees shall be permitted to use such seats when it does not interfere with the performance of  
7 their duties.”

8 127. During the relevant time period, Defendants violated California Labor Code section  
9 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because Plaintiffs and other  
10 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were they  
11 provided with suitable seats in reasonable proximity to their work areas.

12 128. Defendants’ California stores are generally similar in their layout and design and there  
13 was, and continues to be, space near their work areas (with reasonable or no modification to these work  
14 areas) to allow for the presence and use of a seat or stool by Plaintiffs and other aggrieved employees  
15 during lulls in operation. Defendants could have provided Plaintiffs and other aggrieved employees with  
16 a seat or stool in their work areas, but instead denied, and continue to deny, employees seating, forcing  
17 them to stand throughout the day.

18 129. Defendants did not provide Plaintiffs and other aggrieved employees with seats or stools  
19 in reasonable proximity to their work areas to allow them to use seats when it would not interfere with  
20 the performance of their duties for times when they were not engaged in active duties that require  
21 standing. In other words, to the extent Plaintiffs and other aggrieved employees engaged in duties in  
22 which the nature of the work required standing, Defendants denied them the use of seats nearby during  
23 lulls in their work duties. Moreover, Defendants did not inform Plaintiffs and other aggrieved employees  
24 of their rights to a seat or stool under California law.

25 130. As a result of Defendants’ company-wide policy and/or practice of prohibiting  
26 employees from sitting at any time, even when they were not engaged in active duties requiring standing,  
27 and company-wide failure to provide seats in reasonable proximity to their work areas, Plaintiffs and  
28 other aggrieved employees were forced to stand during shifts and denied seats. Defendants’ failure to

1 provide suitable seating to Plaintiffs and other aggrieved employees violates California Labor Code  
2 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B). Plaintiffs and other aggrieved  
3 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),  
4 and (g).

5 131. At all relevant times herein, California's Wage Theft Prevention Act was enacted to  
6 ensure that employers provide employees with basic information material to their employment  
7 relationship at the time of hiring, and to ensure that employees are given written and timely notice of any  
8 changes to basic information material to their employment. Codified at California Labor Code section  
9 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide  
10 written notice to employees containing basic and material payroll information, including, among other  
11 things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,  
12 commission, or otherwise, including any rates for overtime, the regular payday designated by the  
13 employer, and any allowances claims as part of the minimum wage, including meal or lodging  
14 allowances. Labor Code § 2810.5(a)(1)(A)-(C).

15 132. At all relevant times, on information and belief, Defendants failed, on a company-wide  
16 basis, to provide written notice to Plaintiffs and other aggrieved employees that lists the requisite  
17 information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide  
18 Plaintiffs and other aggrieved employees with written notice of basic information regarding their  
19 employment with Defendants is in violation of Labor Code section 2810.5. Plaintiffs and other  
20 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections  
21 2699(a), (f), and (g).

## 22 **TENTH CAUSE OF ACTION**

### 23 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### 24 **Unlawful Business Practices**

#### 25 **(Against all Defendants)**

26 133. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
27 allegation set forth above.

28 134. Defendants are "persons" as defined by California Business & Professions Code section

17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

135. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

136. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

137. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiffs and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide all meal periods to Plaintiffs and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiffs and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order,

as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204, as alleged herein;

(g) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and

(h) Failing to provide written notice of information material to Plaintiffs' and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

138. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

139. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiffs and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

140. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

141. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs

1 and class members are entitled to restitution of the wages withheld and retained by Defendants during a  
2 period that commences four years prior to the filing of the initial complaint; a permanent injunction  
3 requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of  
4 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws;  
5 and an award of costs.

6 **ELEVENTH CAUSE OF ACTION**

7 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

8 **Unfair Business Practices**

9 **(Against all Defendants)**

10 142. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every  
11 allegation set forth above.

12 143. Defendants are “persons” as defined by California Business & Professions Code section  
13 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

14 144. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and  
15 harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and  
16 has lost money as a result of Defendants’ unfair business practices. Plaintiffs seek to enforce important  
17 rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

18 145. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not  
19 paying Plaintiffs and class members all meal and rest period premiums due to them under Labor Code  
20 section 226.7, deprived Plaintiffs and class members of the compensation guarantee and enhanced  
21 enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-  
22 purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer  
23 conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App 4th 1138, 1149 (2015). The statutory benefits  
24 of section 226.7 were guaranteed to Plaintiffs and class members as part of their employment with  
25 Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes  
26 an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.*  
27 (*Id.*)

28 146. A violation of California Business & Professions Code sections 17200, *et seq.* may be

1 predicated on any unfair business practice. In the instant case, Defendants' policies and practices have  
2 violated the spirit of California's meal and rest period laws and constitute acts against the public policy  
3 behind these laws.

4 147. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs  
5 and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented  
6 by section 226.7 withheld and retained by Defendants during a period that commences four years prior to  
7 the filing of the initial complaint; a permanent injunction requiring Defendants to pay all statutory  
8 benefits implemented by section 226.7 due to Plaintiffs and class members; an award of attorneys' fees  
9 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award  
10 of costs.

11 //

#### 12 **REQUEST FOR JURY TRIAL**

13 Plaintiffs request a trial by jury.

#### 14 **PRAYER FOR RELIEF**

15 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against  
16 Defendants, jointly and severally, as follows:

17 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of  
18 twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs reserve the right to  
19 amend their prayer for relief to seek a different amount.

#### 20 **Class Certification**

- 21 2. That this case be certified as a class action;  
22 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;  
23 4. That counsel for Plaintiffs be appointed as class counsel.

#### 24 **As to the First Cause of Action**

25 5. That the Court declare, adjudge, and decree that Defendants violated California Labor  
26 Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime  
27 wages due to Plaintiffs and class members;

28 6. For general unpaid wages at overtime wage rates and such general and special damages

as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Third Cause of Action**

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiffs and class members;

17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as

otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiffs and class members to take all rest periods;

24. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Sixth Cause of Action**

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and

1 rest period premiums owed at the time of termination of the employment of Plaintiffs and other  
2 terminated class members;

3 37. For all actual, consequential and incidental losses and damages, according to proof;

4 38. For waiting time penalties according to proof pursuant to California Labor Code section  
5 203 for all employees who have left Defendants' employ;

6 39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or  
7 as otherwise provided by law;

8 40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as  
9 otherwise provided by law; and

10 41. For such other and further relief as the Court may deem equitable and appropriate.

11 **As to the Seventh Cause of Action**

12 42. That the Court declare, adjudge and decree that Defendants violated California Labor  
13 Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime wages,  
14 minimum wages, and/or meal and rest period premiums during their employment;

15 43. For all actual, consequential and incidental losses and damages, according to proof;

16 44. For statutory penalties according to proof pursuant to California Labor Code section  
17 210;

18 45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or  
19 as otherwise provided by law;

20 46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as  
21 otherwise provided by law; and

22 47. For such other and further relief as the Court may deem equitable and appropriate.

23 **As to the Eighth Cause of Action**

24 48. That the Court declare, adjudge and decree that Defendants violated California Labor  
25 Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and  
26 costs incurred by Plaintiffs and class members;

27 49. For unpaid business-related expenses and such general and special damages as may be  
28 appropriate;

1           50.     For pre-judgment interest on any unpaid business-related expenses from the date such  
2 amounts were due, or as otherwise provided by law;

3           51.     For all actual, consequential, and incidental losses and damages, according to proof;

4           52.     For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as  
5 otherwise provided by law; and

6           53.     For such other and further relief as the Court may deem equitable and appropriate.

7                                   **As to the Ninth Cause of Action**

8           54.     That the Court declare, adjudge and decree that Defendants violated the following  
9 California Labor Code provisions as to Plaintiffs and/or other aggrieved employees: 510 and 1198 (by  
10 failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at  
11 least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal  
12 periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and  
13 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and  
14 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned  
15 wages during employment); 1198 and the applicable IWC Wage Order (by failing to provide suitable  
16 seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of  
17 material terms of employment);

18           55.     For civil penalties pursuant to the California Labor Code, including sections 210, 226.3,  
19 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204,  
20 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

21           56.     For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and  
22 any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201,  
23 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and  
24 2810.5;

25           57.     For pre-judgment and post-judgment interest as provided by law; and

26           58.     For such other and further relief as the Court may deem equitable and appropriate.

27                                   **As to the Tenth Cause of Action**

28           59.     That the Court declare, adjudge and decree that Defendants' conduct of failing to

1 provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and  
2 class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal  
3 periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to  
4 provide Plaintiffs and class members accurate and complete wage statements, failing to maintain  
5 accurate payroll records for Plaintiffs and class members, failing to timely pay Plaintiffs and class  
6 members all earned wages during employment, failing to reimburse Plaintiffs and class members for  
7 business-related expenses, and failing to provide written notice of material terms of employment,  
8 constitutes an unlawful business practice in violation of California Business and Professions Code  
9 sections 17200, *et seq.*;

10 60. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment  
11 interest from the day such amounts were due and payable;

12 61. For the appointment of a receiver to receive, manage and distribute any and all funds  
13 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result  
14 of violations of California Business & Professions Code sections 17200, *et seq.*;

15 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California  
16 Code of Civil Procedure section 1021.5; and

17 63. For such other and further relief as the Court may deem equitable and appropriate.

18 **As to the Eleventh Cause of Action**

19 64. That the Court declare, adjudge and decree that Defendants' conduct of denying  
20 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair  
21 business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

22 65. For restitution of the statutory benefits under section 226.7 unfairly withheld from  
23 Plaintiffs and class members and prejudgment interest from the day such amounts were due and payable;

24 66. For the appointment of a receiver to receive, manage and distribute any and all funds  
25 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result  
26 of violations of California Business & Professions Code sections 17200, *et seq.*;

27 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California  
28 Code of Civil Procedure section 1021.5;

- 1           68.     For pre-judgment and post-judgment interest as provided by law; and  
2           69.     For such other and further relief as the Court may deem equitable and appropriate.

3  
4     Dated: January 16, 2025

Respectfully submitted,

Capstone Law APC

6  
7     By: \_\_\_\_\_

8     Robert Drexler  
9     Jonathan Lee  
10    Robert Myong

11           Attorneys for Plaintiffs Oscar Cancino and Marcos  
12           Mendiola

# **EXHIBIT “1”**



1875 Century Park East, Suite 1000  
Los Angeles, California 90067  
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA  
310.712.8030 Direct  
Mao.Shiokura@capstonelawyers.com

November 23, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.tfaforms.net/308>)

Subject: *Oscar Cancino v. Cotton On USA Inc.*

Dear PAGA Administrator:

This office represents Oscar Cancino in connection with his claims under the California Labor Code. Mr. Cancino was an employee of COTTON ON USA INC. ("COTTON ON").

The employer may be contacted directly at the address below:

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638

Mr. Cancino intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Cancino seeks relief on behalf of himself, the State of California, and other persons who are or were employed by COTTON ON in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

COTTON ON employed Mr. Cancino as a non-exempt Sales Associate from approximately September 2021 to September 2022. Mr. Cancino worked at COTTON ON's retail store located in Oxnard, California. During his employment, Mr. Cancino typically worked seven (7) hours or more per day, and four (4) days per week. Mr. Cancino's job duties included, without limitation, ringing up customer transactions, answering customers' questions, and organizing merchandise on the sales floor.

COTTON ON has committed one or more of the following Labor Code violations against Mr. Cancino, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):<sup>1</sup>

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<sup>1</sup> These facts, theories, and claims are based on Mr. Cancino's experience and counsel's review of those records currently available relating to Mr. Cancino's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially

### **COTTON ON's Company-Wide and Uniform Payroll and HR Practices**

COTTON ON USA INC. is a Delaware corporation. COTTON ON is an Australian retail chain known for their fast-fashion clothing for men, women, and kids sold through their Cotton On, Cotton On Kids, Cotton On Body, and Typo brands. COTTON ON owns and operates approximately 1,300 store locations in the United States, including approximately 38 retail store locations California. Upon information and belief, COTTON ON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in La Mirada, California, for all non-exempt, hourly paid employees working for COTTON ON in California, including Mr. Cancino and other aggrieved employees. At all relevant times, COTTON ON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Cancino and other aggrieved employees, regardless of their location or position.

Upon information and belief, COTTON ON maintains a centralized Payroll department at its corporate headquarters in La Mirada, California, which processes payroll for all non-exempt, hourly paid employees working for COTTON ON in California, including Mr. Cancino and other aggrieved employees. Further, COTTON ON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Cancino and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, COTTON ON utilized the same methods and formulas when calculating wages due to Mr. Cancino and other aggrieved employees in California.

### **Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime**

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

COTTON ON willfully failed to pay all overtime wages owed to Mr. Cancino and other aggrieved employees. During the relevant time period, Mr. Cancino and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, COTTON ON had, and continues to have, a company-wide policy and/or practice requiring Mr. Cancino and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, because COTTON ON's timekeeping system was integrated with the company's point-of-sale ("POS") system, Mr. Cancino and other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Mr. Cancino was required to wait several minutes under COTTON ON's control until a POS machine was available for clocking-in, time for which he was not paid. Further, during this time while Mr. Cancino waited to clock in for the start of his shift,

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aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Cancino reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

approximately three (3) times per week, Mr. Cancino was required to complete tasks such as unlocking fitting room doors and allowing customers into fitting rooms. As another example, Mr. Cancino sometimes clocked out at the end of his shift, but was required to continue working in order to reduce the number of customers waiting in line to checkout during a rush of customer foot traffic, taking up to 10 minutes per instance. Thus, COTTON ON failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Cancino and other aggrieved employees received no compensation for this time.

In addition, due to COTTON ON's practice of scheduling some shifts outside of daytime business hours, Mr. Cancino and other aggrieved employees could only enter COTTON ON's stores to clock in when other managerial or keyholder employees were available to open the doors. For example, on two (2) occasions, after reporting to work on time, Mr. Cancino was forced to wait for approximately 5-10 minutes until a manager or keyholder employee arrived at the store, before being able to enter COTTON ON's store and clock in, because there was no one available to open the doors for him. As a result, Mr. Cancino and other aggrieved employees were forced to work off-the-clock, but were not provided a means by COTTON ON to account for this time. Thus, COTTON ON failed to track this time spent working off-the-clock before their scheduled shifts, and Mr. Cancino and other aggrieved employees received no compensation for this time they remained under COTTON ON's control.

Second, COTTON ON had, and continues to have, a company-wide security policy and/or practice of requiring employees to leave the store premises together in pairs and/or groups. After clocking out at the end of their shifts, Mr. Cancino and other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave COTTON ON's premises together. For example, Mr. Cancino would often clock out at his scheduled shift-end time, and then have wait for about 15 minutes until his supervisor had completed his or her closing tasks and locked up the store premises, before being released and able to leave the premises. COTTON ON also had a company-wide policy of requiring employees to undergo mandatory security checks by a managerial employee when exiting the premises, either for loss prevention or safety purposes. As a result of COTTON ON's policy, Mr. Cancino and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift before COTTON ON permitted them to leave the premises. For example, before Mr. Cancino was permitted to leave the premises at the end of his shift, Mr. Cancino was required to wait several minutes off-the-clock for his supervisor to check his bag and personal belongings. As a result, Mr. Cancino and other aggrieved employees were subject to COTTON ON's control after they had clocked out for their shifts, but were not compensated for this time.

Third, COTTON ON had, and continues to have, a company-wide policy and/or practice of strictly staffing its store locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. For example, on information and belief, COTTON ON limited the allocation of labor hours based on certain sales metrics, but this allotment was insufficient to staff the store locations during their hours of operation, meet customer demand, and provide adequate meal period coverage. COTTON ON's uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Mr. Cancino and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, COTTON ON had a practice of failing to schedule meal periods, which further caused Mr. Cancino and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Cancino and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

In addition, COTTON ON's company-wide timekeeping system prevented Mr. Cancino and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Cancino and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, COTTON ON's timekeeping system further prevented Mr. Cancino and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

COTTON ON knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Cancino and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Cancino and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, COTTON ON did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, COTTON ON paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, COTTON ON failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, COTTON ON failed to pay all overtime wages by paying a lower overtime rate than required.

COTTON ON's failure to pay Mr. Cancino and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages**

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, as set forth above, COTTON ON had a company-wide policy and/or practice requiring Mr. Cancino and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including waiting to clock in for the start of their shifts and completing work tasks during this time because other employees were using the POS system, assisting customers after clocking out, waiting for manager or keyholder employees to arrive and open COTTON ON's stores, waiting to leave the premises in pairs, and undergoing security checks. Thus, COTTON ON failed to track this time Mr. Cancino and other aggrieved employees spent working off-the-clock, and Mr. Cancino and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to COTTON ON's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Cancino and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, as stated, COTTON ON systematically failed to pay Mr. Cancino and other aggrieved employees for actual hours worked during unpaid meal periods, because COTTON ON's timekeeping system locked out Mr. Cancino and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Thus, COTTON ON did not pay minimum wages for all hours worked by Mr. Cancino and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, COTTON ON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, COTTON ON regularly failed to pay at least minimum wages to Mr. Cancino and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, COTTON ON had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Cancino and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Cancino and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Cancino was required to work through his meal periods or could not take his meal periods until the sixth hour of his shift, due to the heavy workload and lack of coverage.

Also, as stated, COTTON ON's company-wide timekeeping system prevented Mr. Cancino and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Cancino and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Cancino's meal periods were sometimes interrupted or cut short because he was required to attend to customers that had been waiting to be let into fitting rooms and the only other employee available was busy assisting other customers at the front-end register.

Moreover, COTTON ON did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Cancino and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, COTTON ON knew or should have known that as a result of its policies, Mr. Cancino and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. COTTON ON further knew or should have known that it did not pay Mr. Cancino and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, COTTON ON engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cancino and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that COTTON ON did pay other aggrieved employees for missed, late, and interrupted meal periods, COTTON ON did not pay other aggrieved employees at the correct rate of pay for premiums because COTTON ON systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTON ON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Cancino and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods**

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, COTTON ON regularly failed to authorize and permit Mr. Cancino and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, COTTON ON's company-wide practices of utilizing labor budgets and/or limited payroll allocation, understaffing, and assignment of heavy workloads resulted in a lack of rest period coverage and prevented Mr. Cancino and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. COTTON ON's management erroneously informed Mr. Cancino and other aggrieved employees that they were only entitled to one (1) 10-minute rest period per shift, regardless of the shift length. Thus, COTTON ON also wholly failed to schedule

compliant, timely rest periods, which further led to Mr. Cancino and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, COTTON ON maintained a company-wide on-premises rest period policy, which mandated that Mr. Cancino and other aggrieved employees remain on COTTON ON's premises during their rest periods. Because Mr. Cancino and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, COTTON ON effectively maintained control over Mr. Cancino and other aggrieved employees during rest periods.

As a result of COTTON ON's practices and policies, Mr. Cancino and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Cancino regularly had to forego his rest periods because the store was busy and COTTON ON did not provide sufficient coverage. When Mr. Cancino was finally able to take his rest periods, they were often interrupted because he was required to attend to customers that had been waiting to check-out and the only other employee available was busy assisting customers in the fitting room area.

COTTON ON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Cancino and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that COTTON ON did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, COTTON ON did not pay other aggrieved employees at the correct rate of pay for premiums because COTTON ON failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTON ON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cancino and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. COTTON ON has not provided Mr. Cancino and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, COTTON ON has knowingly and intentionally provided Mr. Cancino and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, COTTON ON issued uniform wage statements to Mr. Cancino and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including

rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, COTTON ON violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because COTTON ON did not record the time Mr. Cancino and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), COTTON ON did not list the correct amount of gross wages and net wages earned by Mr. Cancino and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, COTTON ON failed to accurately list the total number of the hours worked by Mr. Cancino and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because COTTON ON did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, COTTON ON did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). COTTON ON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Additionally, and separately from these violations, COTTON ON issued uniform wage statements to Mr. Cancino and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, COTTON ON systematically, and on a company-wide basis, issued wage statements to Mr. Cancino and other aggrieved employees that fail to list the employing entity's name and address. For example, on information and belief, COTTON ON uniformly failed to correctly list the employing entity's name and address on Mr. Cancino's and other aggrieved employees' wage statements, including Mr. Cancino's wage statements dated August 12, 2022; August 26, 2022; and September 9, 2022.

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), COTTON ON willfully failed to maintain accurate payroll records for Mr. Cancino and other aggrieved employees

showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, COTTON ON engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Cancino and other aggrieved employees in violation of section 1198. Furthermore, in light of COTTON ON’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, COTTON ON kept no records of meal start and end times for second meal periods.

Because COTTON ON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Cancino and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Cancino and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, COTTON ON failed to pay Mr. Cancino and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination**

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an

employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

COTTON ON willfully failed to pay Mr. Cancino and other aggrieved employees who are no longer employed by COTTON ON all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving COTTON ON's employ.

Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

COTTON ON's California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Mr. Cancino and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. COTTON ON could provide Mr. Cancino and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Mr. Cancino and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, COTTON ON systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Mr. Cancino and other aggrieved employees to stand throughout their work shifts.

COTTON ON violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Cancino and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with

suitable seats. COTTON ON's management did not inform Mr. Cancino and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of COTTON ON's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Cancino and other aggrieved employees were forced to stand during shifts and denied seats. COTTON ON's failure to provide suitable seating to Mr. Cancino and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring COTTON ON into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

COTTON ON's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Cancino and other aggrieved employees during lulls in operation. COTTON ON could have provided Mr. Cancino and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

COTTON ON did not provide Mr. Cancino and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Cancino and other aggrieved employees engaged in duties in which the nature of the work required standing, COTTON ON denied them the use of seats nearby during lulls in their work duties. Moreover, COTTON ON did not inform Mr. Cancino and other aggrieved employees of their rights to a seat or stool under California law.

As a result of COTTON ON's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide

failure to provide seats in reasonable proximity to their work areas, Mr. Cancino and other aggrieved employees were forced to stand during shifts and denied seats. COTTON ON's failure to provide suitable seating to Mr. Cancino and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring COTTON ON into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, COTTON ON had a company-wide policy of requiring Mr. Cancino and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but COTTON ON failed to reimburse them for the costs of their work-related mobile device expenses. Mr. Cancino and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages or checking merchandise inventory at other COTTON ON store locations. Specifically, Mr. Cancino used his personal cellular phone to respond to calls or text messages from his managers and to check the availability of merchandise at other store locations, when his store location had run out of a certain item a customer wanted to purchase. Although COTTON ON required Mr. Cancino and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, COTTON ON failed to reimburse them for these costs.

Second, during the relevant time period, COTTON ON, on a company-wide basis, required that other aggrieved employees use their own personal vehicles to run company errands. For example, other aggrieved employees were required to use their personal vehicles and drive to the bank to complete a deposit or obtain change for the cash registers. Although COTTON ON required other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, COTTON ON failed to reimburse them for their mileage or travel expenses.

COTTON ON could have provided Mr. Cancino and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles, or, COTTON ON could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, COTTON ON passed these operating costs off onto Mr. Cancino and other aggrieved employees. At all relevant times, Mr. Cancino did not earn at least two (2) times the minimum wage.

Thus, COTTON ON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

**Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment**

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

COTTON ON failed to provide Mr. Cancino and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). COTTON ON’s failure to provide Mr. Cancino and other aggrieved employees with written notice of basic information regarding their employment with COTTON ON is in violation of Labor Code section 2810.5.

Mr. Cancino and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

**California Labor Code § 558(a)**

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” COTTON ON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Cancino’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Cancino seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Cancino, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against COTTON ON for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Cancino seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,

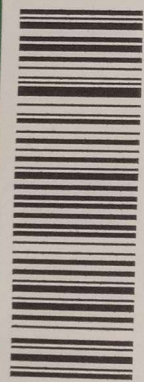
A handwritten signature in black ink, appearing to read "Mao Shiokura". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mao Shiokura

Copy: COTTON ON USA INC. (via U.S. Certified Mail)

Capstone Law, APC  
1875 Century Park, East, 1000  
Los Angeles, CA. 90067

CERTIFIED MAIL®



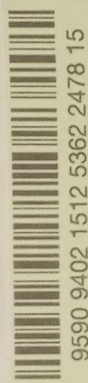
7022 2410 0000 2406 3997

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638



9590 9402 1512 5362 2478 15

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3997

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent  
**X** ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™  
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For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

OFFICIAL USE

Certified Mail Fee \$  
Extra Services & Fees (check box, add fee as appropriate)  
☐ Return Receipt (hardcopy) \$  
☐ Return Receipt (electronic) \$  
☐ Certified Mail Restricted Delivery \$  
☐ Adult Signature Required \$  
☐ Adult Signature Restricted Delivery \$

Canine  
Postmark  
Here

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638

Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638



9590 9402 1512 5362 2478 15

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3997

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

NATHAN LANE

☐ Agent

☐ Addressee

B. Received by (Printed Name)

NATHAN LANE

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

**Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

# **EXHIBIT “2”**



1875 Century Park East, Suite 1000  
Los Angeles, California 90067  
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN  
310.712.8146 Direct  
Ninel.Kocharyan@capstonelawyers.com

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July 15, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.govfa.net/308>)

Subject: *Marcos Mendiola v. Cotton On USA Inc.*

Dear PAGA Administrator:

This office represents Marcos Mendiola in connection with his claims under the California Labor Code. Mr. Mendiola was an employee of COTTON ON USA INC. ("COTTON ON").

The employer may be contacted directly at the address below:

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638

Mr. Mendiola intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Mendiola seeks relief on behalf of himself, the State of California, and other persons who are or were employed by COTTON ON as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

COTTON ON employed Mr. Mendiola as an hourly paid, non-exempt Key Holder from approximately August 2023 to December 2023. Mr. Mendiola worked at COTTON ON's retail store located in Victorville, California. Mr. Mendiola typically worked six (6) hours or more per day, and four (4) or more days per week. At the time Mr. Mendiola's employment with COTTON ON ended, he was compensated approximately \$18.00 per hour. Mr. Mendiola's primary job duties included, without limitation, opening and closing the store, attending meetings, and providing customer service.

COTTON ON committed one or more of the following Labor Code violations against Mr. Mendiola, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **COTTON ON’s Company-Wide and Uniform Payroll and HR Practices**

COTTON ON USA INC. is a Delaware corporation. COTTON ON is an Australian retail chain known for their fast-fashion clothing for men, women, and kids sold through their Cotton On, Cotton On Kids, Cotton On Body, and Typo brands. COTTON ON owns and operates approximately 1,300 store locations in the United States, including approximately 38 retail store locations in California. Upon information and belief, COTTON ON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in La Mirada, California, for all non-exempt, hourly paid employees working for COTTON ON in California, including Mr. Mendiola and other aggrieved employees. At all relevant times, COTTON ON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mendiola and other aggrieved employees, regardless of their location or position.

Upon information and belief, COTTON ON maintains a centralized Payroll department at its corporate headquarters in La Mirada, California, which processes payroll for all non-exempt, hourly paid employees working for COTTON ON in California, including Mr. Mendiola and other aggrieved employees. Further, COTTON ON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Mendiola and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, COTTON ON utilized the same methods and formulas when calculating wages due to Mr. Mendiola and other aggrieved employees in California.

### **Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime**

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

COTTON ON willfully failed to pay all overtime wages owed to Mr. Mendiola and other aggrieved employees. During the relevant time period, Mr. Mendiola and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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<sup>1</sup> These facts, theories, and claims are based on Mr. Mendiola’s experience and counsel’s review of those records currently available relating to Mr. Mendiola’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Mendiola reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, COTTON ON had, and continues to have, a company-wide policy and/or practice requiring Mr. Mendiola and other aggrieved employees to perform various work-related tasks while off-the-clock before and/or after their shifts. For example, Mr. Mendiola sometimes clocked out at the end of his shift but was required to continue working and complete processing shipments, taking up to one (1) hour per instance. As a further example, COTTON ON required Mr. Mendiola and other aggrieved employees to complete surveys and watch training videos online, which would take approximately three (3) hours to complete every quarter. Additionally, because COTTON ON's timekeeping system was integrated with the company's point-of-sale ("POS") system, other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, other aggrieved employees were required to wait several minutes under COTTON ON's control until a POS machine was available for clocking-in, time for which they were not paid. Further, during this time, while other aggrieved employees waited to clock in for the start of their shift, approximately three (3) times per week, other aggrieved employees were required to complete tasks such as unlocking fitting room doors to allow customers into fitting rooms. Finally, other aggrieved employees sometimes clocked out at the end of their shift, but were required to continue working in order to reduce the number of customers waiting in line to checkout during a rush of customer foot traffic, taking up to 10 minutes per instance. Thus, COTTON ON failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Mendiola and other aggrieved employees received no compensation for this time.

In addition, due to COTTON ON's practice of scheduling some shifts outside of daytime business hours, other aggrieved employees could only enter COTTON ON's stores to clock in when other managerial or keyholder employees were available to open the doors. For example, on some occasions, after reporting to work on time, other aggrieved employees were forced to wait for approximately 5-10 minutes until a manager or keyholder employee arrived at the store, before being able to enter COTTON ON's store and clock in, because there was no one available to open the doors for them. As a result, other aggrieved employees were forced to work off-the-clock, but were not provided a means by COTTON ON to account for this time. Thus, COTTON ON failed to track this time spent working off-the-clock before their scheduled shifts, and other aggrieved employees received no compensation for this time they remained under COTTON ON's control.

Second, COTTON ON had, and continues to have, a company-wide security policy and/or practice of requiring employees to undergo mandatory security checks by a managerial employee when exiting the premises, either for loss prevention or safety purposes. As a result of COTTON ON's policy, Mr. Mendiola and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift before COTTON ON permitted them to leave the premises. For example, before Mr. Mendiola was permitted to leave the premises at the end of his shift, Mr. Mendiola was required to wait several minutes off-the-clock for his supervisor to check his bag and personal belongings. COTTON ON also had a company-wide policy of requiring employees to leave the store premises together in pairs and/or groups. After clocking out at the end of their shifts, other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave COTTON ON's premises together. For example, other aggrieved employees would often clock out at their scheduled shift-end time, and then have wait for about 15 minutes until their supervisor had completed his or her closing tasks and locked up the store premises, before being released and able to leave the premises. As a result, Mr. Mendiola and other aggrieved employees were subject to COTTON ON's control after they had clocked out for their shifts, but were not compensated for this time.

Third, COTTON ON had, and continues to have, a company-wide policy and/or practice of strictly staffing its store locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. For example, on information and belief, COTTON ON limited the allocation of

labor hours based on certain sales metrics, but this allotment was insufficient to staff the store locations during their hours of operation, meet customer demand, and provide adequate meal period coverage. COTTON ON's uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Mr. Mendiola and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, COTTON ON had a practice of failing to schedule meal periods, which further caused Mr. Mendiola and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Mendiola and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

In addition, COTTON ON's company-wide timekeeping system prevented Mr. Mendiola and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mendiola and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, COTTON ON's timekeeping system further prevented Mr. Mendiola and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Further, on information and belief, because COTTON ON frowned upon employees accruing meal period penalties, COTTON ON's management pressured Mr. Mendiola and other aggrieved employees to record compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that COTTON ON would otherwise owe. Thus, COTTON ON did not record all hours worked during meal periods, and Mr. Mendiola and other aggrieved employees performed work during meal periods for which they were not paid.

COTTON ON knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Mendiola and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Mendiola and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, COTTON ON did not pay Mr. Mendiola and/or other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, COTTON ON paid Mr. Mendiola and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, COTTON ON failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Mendiola and/or other aggrieved employees worked overtime and received these other forms of pay, COTTON ON failed to pay all overtime wages by paying a lower overtime rate than required.

COTTON ON's failure to pay Mr. Mendiola and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages**

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, as set forth above, COTTON ON had a company-wide policy and/or practice requiring Mr. Mendiola and/or other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including processing shipments, completing surveys, watching training videos, waiting to clock in for the start of their shifts and completing work tasks during this time because other employees were using the POS system, assisting customers after clocking out, waiting for manager or keyholder employees to arrive and open COTTON ON’s stores, waiting to leave the premises in pairs, and undergoing security checks. Thus, COTTON ON failed to track this time Mr. Mendiola and other aggrieved employees spent working off-the-clock, and Mr. Mendiola and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to COTTON ON’s uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Mendiola and other aggrieved employees were forced to forgo meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, as stated, COTTON ON systematically failed to pay Mr. Mendiola and other aggrieved employees for actual hours worked during unpaid meal periods, because COTTON ON’s timekeeping system locked out Mr. Mendiola and other aggrieved employees for 30 minutes when they clocked out for a meal period. Further, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, COTTON ON’s management pressured Mr. Mendiola and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, COTTON ON failed to pay Mr. Mendiola and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, COTTON ON did not pay at least minimum wages for all hours worked by Mr. Mendiola and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, COTTON ON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, COTTON ON regularly failed to pay at least minimum wages to Mr. Mendiola and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor

Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, COTTON ON had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Mendiola and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Mendiola and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Mendiola was required to work through his meal periods or could not take his meal periods until after the fifth hour of his shift, due to the heavy workload and lack of coverage.

Also, as stated, COTTON ON's company-wide timekeeping system prevented Mr. Mendiola and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mendiola and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Mendiola's meal periods were sometimes interrupted or cut short because he was required to assist new employees and answer their questions.

Moreover, COTTON ON did not provide Mr. Mendiola and/or other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Mendiola and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, COTTON ON knew or should have known that as a result of its policies, Mr. Mendiola and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. COTTON ON further knew or should have known that it did not pay Mr. Mendiola and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, as stated, on information and belief, because COTTON ON frowned upon employees accruing meal period penalties, COTTON ON's management pressured Mr. Mendiola and other aggrieved employees to record compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that COTTON ON would otherwise owe.

Moreover, COTTON ON engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Mendiola and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that COTTON ON did pay Mr. Mendiola and/or other aggrieved employees for missed, late, interrupted, and shortened meal periods, COTTON ON did not pay Mr. Mendiola and/or other aggrieved employees at the correct rate of pay for premiums because

COTTON ON systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTON ON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mendiola and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods**

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, COTTON ON regularly failed to authorize and permit Mr. Mendiola and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, COTTON ON's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Mendiola and other aggrieved employees from being relieved of all duty to take rest periods. COTTON ON's management erroneously informed other aggrieved employees that they were only entitled to one (1) 10-minute rest period per shift, regardless of the shift length. Thus, COTTON ON also wholly failed to schedule compliant, timely rest periods, which further led to Mr. Mendiola and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, COTTON ON maintained a company-wide on-premises rest period policy, which effectively required that Mr. Mendiola and other aggrieved employees remain on or near the premises during their rest periods. Because Mr. Mendiola and other aggrieved employees were effectively restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, COTTON ON effectively maintained control over Mr. Mendiola and other aggrieved employees during rest periods.

As a result of COTTON ON's practices and policies, Mr. Mendiola and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Mendiola had to forgo his rest periods entirely due to lack of coverage and heavy workload.

COTTON ON has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice

and/or policy, Mr. Mendiola and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that COTTON ON did pay Mr. Mendiola and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, COTTON ON did not pay Mr. Mendiola and/or other aggrieved employees at the correct rate of pay for premiums because COTTON ON failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTON ON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mendiola and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. COTTON ON has not provided Mr. Mendiola and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, COTTON ON has knowingly and intentionally provided Mr. Mendiola and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, COTTON ON issued uniform wage statements to Mr. Mendiola and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, COTTON ON violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because COTTON ON did not record the time Mr. Mendiola and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), COTTON ON did not list the correct amount of gross wages and net wages earned by Mr. Mendiola and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, COTTON ON failed to accurately list the total number of hours worked by Mr. Mendiola and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because COTTON ON did not calculate Mr. Mendiola's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, COTTON ON did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, COTTON ON also failed to list the correct amount of net wages in violation of section 226(a)(5). COTTON ON also failed to correctly list all applicable hourly rates in

effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, COTTON ON issued uniform wage statements to Mr. Mendiola and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, COTTON ON systematically, and on a company-wide basis, issued wage statements to Mr. Mendiola and other aggrieved employees that fail to list the employing entity's name and address. For example, on information and belief, COTTON ON uniformly failed to correctly list the employing entity's name and address on Mr. Mendiola's and other aggrieved employees' wage statements, including Mr. Mendiola's wage statements dated December 29, 2023.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), COTTON ON willfully failed to maintain accurate payroll records for Mr. Mendiola and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, COTTON ON engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Mr. Mendiola and other aggrieved employees, in violation of section 1198. Furthermore, in light of COTTON ON's failure to provide Mr. Mendiola and/or other aggrieved employees with second 30-minute meal periods to which they were entitled, COTTON ON kept no records of meal start and end times for second meal periods.

Because COTTON ON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mendiola and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Mendiola and other aggrieved employees have had to

look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, COTTON ON failed to pay Mr. Mendiola and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination**

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, COTTON ON has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Mendiola was terminated on or about December 27, 2023; however, COTTON did not provide Mr. Mendiola with his final paycheck until the next regularly scheduled pay day. Thus, COTTON ON failed to pay Mr. Mendiola his final wages immediately, in violation of California Labor Code section 201.

Additionally, COTTON ON willfully failed to pay Mr. Mendiola and other aggrieved employees who are no longer employed by COTTON ON the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving COTTON ON's employ.

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

COTTON ON’s California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Mr. Mendiola and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. COTTON ON could provide Mr. Mendiola and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Mr. Mendiola and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, COTTON ON systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Mr. Mendiola and other aggrieved employees to stand throughout their work shifts.

COTTON ON violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Mendiola and other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. COTTON ON’s management did not inform Mr. Mendiola and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of COTTON ON’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Mendiola and other aggrieved employees were forced to stand during shifts and denied seats. COTTON ON’s failure to provide suitable seating to Mr. Mendiola and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring COTTON ON into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

COTTON ON's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Mendiola and other aggrieved employees during lulls in operation. COTTON ON could have provided Mr. Mendiola and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

COTTON ON did not provide Mr. Mendiola and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Mendiola and other aggrieved employees engaged in duties in which the nature of the work required standing, COTTON ON denied them the use of seats nearby during lulls in their work duties. Moreover, COTTON ON did not inform Mr. Mendiola and other aggrieved employees of their rights to a seat or stool under California law.

As a result of COTTON ON's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Mendiola and other aggrieved employees were forced to stand during shifts and denied seats. COTTON ON's failure to provide suitable seating to Mr. Mendiola and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring COTTON ON into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen the employer requires the use of tools or equipment or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, COTTON ON had a company-wide policy of requiring Mr. Mendiola and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but COTTON ON failed to reimburse them for the costs of their work-related mobile device expenses. Mr. Mendiola and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages and/or checking merchandise inventory at other COTTON ON store locations. Specifically, Mr. Mendiola used his personal cellular phone to respond to calls or text messages from his managers to discuss other employees’ performance, address issues, and receive assignments. Although COTTON ON required Mr. Mendiola and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, COTTON ON failed to reimburse them for these costs.

Second, during the relevant time period, COTTON ON, on a company-wide basis, required that Mr. Mendiola and/or other aggrieved employees use their own personal vehicles to run company errands. For example, other aggrieved employees were required to use their personal vehicles and drive to the bank to complete a deposit or obtain change for the cash registers. Although COTTON ON required Mr. Mendiola and/or other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, COTTON ON failed to reimburse them for their mileage or travel expenses.

COTTON ON could have provided Mr. Mendiola and/or other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles, or, COTTON ON could have reimbursed employees for their mobile device usage, mileage, and/or travel expenses. Instead, COTTON ON passed these operating costs off onto Mr. Mendiola and other aggrieved employees. At all relevant times, Mr. Mendiola did not earn at least two (2) times the minimum wage.

Thus, COTTON ON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

### **Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment**

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,

including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

COTTON ON failed to provide Mr. Mendiola and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). COTTON ON's failure to provide Mr. Mendiola and other aggrieved employees with written notice of basic information regarding their employment with COTTON ON is in violation of Labor Code section 2810.5.

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

### **California Labor Code § 558(a)**

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." COTTON ON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mendiola's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mendiola seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Mendiola, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against COTTON ON for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Mendiola seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", written in black ink on a light background.

Ninel Kocharyan

Copy: COTTON ON USA INC. (via U.S. Certified Mail); Lindsay E. Hutner, Esq., Greenberg Traurig, LLP, 101 2nd Street, Suite 2200, San Francisco, CA 94105 (via U.S. Certified Mail)

CAPSTONE LAW, APC  
1875 Century Park East  
Suite #1000  
Los Angeles, CA 90067



7022 2410 0000 2406 2280

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638

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COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

COTTON ON USA INC.  
ATTENTION: NATHAN LANE  
16511 TROJAN WAY  
LA MIRADA, CA 90638



9590 9402 7690 2122 7179 83

2 Article Number (Transfer from service label)

7022 2410 0000 2406 2280

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

CAPSTONE LAW, APC  
1875 Century Park East  
Suite #1000  
Los Angeles, CA 90067



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Lindsay E. Hutner, Esq.  
Greenberg Traurig, LLP  
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San Francisco, CA 94105

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☐ Signature Confirmation Restricted Delivery<sup>™</sup> \$

Postmark  
MENDOCINO  
COTTONWOOD

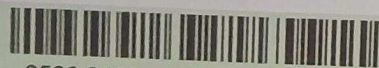
Lindsay E. Hutner, Esq.  
Greenberg Traurig, LLP  
101 2nd Street, Suite 2200  
San Francisco, CA 94105

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

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- Print your name and address on the reverse so that we can return the card to you.

Lindsay E. Hutner, Esq.  
Greenberg Traurig, LLP  
101 2nd Street, Suite 2200  
San Francisco, CA 94105



9590 9402 7690 2122 7179 90

2. Address Number (Transfer from service label)

7022 2410 0000 2406 2297

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

**E. Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail<sup>®</sup>
- ☐ Certified Mail Restricted Delivery<sup>™</sup>
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express<sup>®</sup>
- ☐ Registered Mail<sup>™</sup>
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation<sup>™</sup>
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

Complete items 1, 2, and 3.  
Print your name and address on the reverse  
so that we can return the card to you.

Lindsay E. Humer, Esq.  
Greenberg Traurig, LLP  
101 2nd Street, Suite 2200  
San Francisco, CA 94105



9590 9402 7690 2122 7179 90

2. Article Number (Transfer from service label)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Check*

☒ Agent  
☐ Addressee

3. Received by (Printed Name)

*Checklyn Moon*

C. Date of Delivery

*7-12-2024*

4. Is delivery address different from Item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

5. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

**PROOF OF SERVICE**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 16, 2025**, I served the document described as: **SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Lindsay Hutner  
GREENBERG TRAURIG, LLP  
101 Second Street, Suite 2200  
San Francisco, California  
Lindsay.Hutner@gtlaw.com

*Attorneys for Defendants*  
COTTON ON USA INC.

Samuel S. Hyde  
Taylor Hall  
GREENBERG TRAURIG, LLP  
400 Capitol Mall, Suite 2400  
Sacramento, California 95814  
hydes@gtlaw.com  
hallt@gtlaw.com

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 16, 2025**, at Los Angeles, California.

Sophia Flores  
\_\_\_\_\_  
Type/Print Name

  
\_\_\_\_\_  
Signature